

REMARKS

The following Remarks are made with respect to the Examiner's Statement of Reasons for Allowance ("Statement"), at pages 2-3 of the Notice of Allowability.

Rule 1.104(e) and MPEP 1302.14 permit the Examiner to set forth a written statement of reasons for allowance under certain circumstances. In particular, MPEP 1302.14 requires the statement to be "accurate". The Examiner's Statement is factually incorrect, in that the Examiner asserts that the previously allowed features of dependent claim 44 (now canceled) were incorporated into independent claim 15. However, it was actually the features of dependent claim 42 (now canceled) which were incorporated into independent claim 15, and then subsequently canceled. Accordingly, since the Examiner's Statement violates Rule 1.104(e), it is of no legal effect.

Rule 1.104(e) also limits the Examiners' ability to provide a statement of reasons for allowance to some degree. The rule states, in pertinent part:

If the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the Examiner may set forth such reasoning.

Consequently, where the statement of reason(s) does not clarify the reason(s) for allowance over the prosecution record (or actually further confuses the record), the statement violates Rule 1.104(e). As noted above, the Examiner's Statement is incorrect with respect to which of the claimed features or elements the Examiner considers to have been previously allowed and subsequently canceled. Thus, the Examiner's Statement does not further clarify the record in violation of the MPEP.

Additionally, MPEP 1302.14 expressly provides that "the statement is not intended to necessarily state all the reasons for allowance or all the details why claims are allowed and should not be written to specifically or impliedly state that all the reasons for allowance are set forth." Applicant expressly reserves the right to assert in any future proceedings regarding this application or any patent(s) issuing directly or indirectly

therefrom, the allowability and/or allowance of the claims on the basis of any reason(s) consistent with the prosecution history of the application.

For the foregoing reasons, Applicant therefore denies acquiescence to such Statement and further denies being bound by any presumption or negative inferences that may flow therefrom in any future proceedings regarding this application or any patent(s) issuing directly or indirectly therefrom.

Respectfully submitted,

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